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ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

Written communication submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[11 January 1999]

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Unexpected increase in sanction systems

1. No one challenges the need for regulation by international society and sanctions against those who fail to observe the rules. But these measures, as in any juridical society inspired by the fundamental principles enshrined in the Charter of the United Nations, must be founded on a rigorous definition of their content and duration, be applied in exactly the same way to everyone and be commensurate with the violation committed. The consequences of these sanctions must not infringe the human rights protected by all the international instruments in force.

2. The reality is a paradox: only a handful of small States are victims of economic sanctions, while the major powers and their protected allies are exempt from them, regardless of their conduct. The large-scale economic operators (financial companies, transnational industrial and commercial firms, etc.), whose role determines the effectiveness or otherwise of economic and social rights, are for the most part exempt from any regulation or sanction, whatever the socially disastrous consequences of their decisions.

3. In the unipolar society under construction, a single power - representing the dominant private transnational powers - proclaiming itself to be the "world leader", assimilating its private interests to the interests of the international community as a whole, is progressively elaborating an international pseudo-law which is no more than the internationalization of its national law and the assertion of its sole interests. The embargoes imposed on Iraq, Libya, Cuba and other countries represent a sanction system identical to that contained in America's 1992 Torricelli and 1996 Helms-Burton and D'Amato-Kennedy Acts. Military aggression (for example, against Iraq in December 1998) merely implemented the decisions of its National Security Agency. United States international policy serves the major groups that dominate the world economy and American economic law is there to serve American policy. The purpose of the draft in course of preparation is to make international law identical to American law, within the framework of globalization in the service of a United States-dominated "cosmo-politocracy".

4. This archaic United States practice is only a relic of the "private justice" rendered unlawful by the very existence of the United Nations. The International Court of Justice, in its decison of 27 June 1986, unequivocally ruled against America's attempt to take unilateral "counter-measures" against Nicaragua. The Organization of American States (OAS) and the Holy See, on the occasion of Pope John-Paul's visit to Havana in early 1998, categorically repudiated the embargo imposed on Cuba since 1959.

5. The Security Council's economic sanctions against Iraq (since 1991) and Libya (since 1992) are different, but emanate from American pressure on certain States and the United Nations and display profound juridical pathologies.

6. The measures being perpetuated foresee no definite end to the United Nations sanctions, but impose a regime of permanent semi-sovereignty contrary to the provisions of the Charter. The measures regularly renewed - under various pretexts adduced only by the "experts" of the power that are parties to disputes (see disputes opposing UNSCOM to IAEA and the United Nations organization responsible for food aid, in the matter of arms in Iraq) - show that the

purpose of economic sanctions is not to restore international legality (the only licit one), but to undermine the political regime of a member State of the United Nations and control the energy resources needed by the major powers - first among them, the United States - while controlling the fluctuations in the barrel price of oil.

7. The measures pronounced against Libya for a terrorist act, the alleged evidence of which was never subject to cross-examination in a public trial (in which the judges were not also parties) and for which the United States demanded the extradition of nationals - contrary to virtually all national laws and international agreements (such as the 1971 Montreal Convention) - can only be extended indefinitely in the sole interest of the United States. The various proposed legal solutions contemplated by the United Nations or negotiated by Libya have never been entertained by the United States, often despite the favourable opinion of the European countries, notably France, or powers such as Russia and China. The time that has elapsed since the act imputed to Libya and the disproportion of the sanctions imposed on the entire Libyan population for that act (which could be imputed to a great many member States, including the United States, whose liabilty for internal terrorism in Italy, for instance, has been proclaimed by the Italian justice system) remove any grounds for an embargo now in force for over seven years.

8. The Commission on Human Rights is competent to examine the consequences of these measures in the context of deteriorating mechanisms for the protection of human rights and the rights of peoples, because the various embargoes share the blame for infringing, by their impersonal nature, the most fundamental of individual rights, the right to health, and the collective right to development, both of which the United Nations mechanisms are there to guarantee and strengthen.

9. Individualization of sentences is generally accepted as a fundamental principle of civilized law. International criminal courts (especially the Criminal Tribunal in the Hague) are founded on individual responsibilities and the personlaization of sentences, even when it is the crime of genocide that is being punished. The same is true of the Criminal Court established in Rome in 1998. That being said, sanctions such as an embargo can only be collective, although they originate in infractions that are quite different from genocide.

10. Collective measures only affect the weakest States and those that lack the protection of the powerful, themselves perpetrators of equivalent or more serious violations: deliberate discriminatory inequality in the imposition of sanctions is itself illegal. The collective nature of sanctions makes them incompatible with respect for human rights. The international community has finally, over the years, agreed on that. The obligations undertaken by States when they adhere to international human rights instruments are not suspended for an embargo. These instruments have full and binding force and can never be waived. The powers (especially the United States) that never fail to invoke the necessary respect for human rights render them totally ineffective with the measures to which they subject certain populations. For instance, they reproach certain States with applying in their domestic conduct what it practices itself internationally. The International Court of Justice, in a decision dating back to 1971, had already declared that the Namibian people,

then under South African domination, must not be made to endure the sanctions taken against the apartheid regime.

11. What is more, the credit of the United Nations in international opinion and the prestige of international law, already so small, cannot but suffer the consequences of the unequal treatment meted out to the various populations, depending on their degree of subordination to the United States, that is, according to purely political, as opposed to juridical or humane, criteria. The United Nationa, including the Security Council, is an institution for the promotion of human rights. International law cannot be used to mask the destruction of peoples and erosion of sovereignty.

12. Embargoes are only yet another blocking device for international society, used exclusively for the profit of the forces and interests that benefit from globalization. This economic and financial process requires a transnational political "system" that is in keeping with the globalized market "economy". The approach of the Commission on Human Rights cannot be such as to separate the defence of human rights and the general trend in international society and the interests that dominate it. It cannot become part of the movement that is installing "global governance" to the detriment of peoples and their self-determination.

13. The Commission on Human Rights, therefore, has good reason to take note of the existing incompatibility of collective economic sanctions with the adaptation of the human rights protection mechanisms and to prove it by disseminating information on the changes in the situation of peoples subjected to embargoes, to alert the other United Nations bodies (particularly the International Law Commission which must propose new forms of international sanctions that are compatible with respect for human rights) and to express the wish that all existing embargoes be lifed in the name of human rights and respect for the dignity of peoples.